IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.587 OF 2005

Anil Clifford Cardoz ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. S.B. Dhotre, for the Applicant.

Mr. R.Y. Mirza, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

3rd February 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The prosecution case is that the Applicant and two others mercilessly assaulted Prakash Singh, who was resident of the neighbouring hutment. On going through the record, there is substance in the grievance made on behalf of the Applicant about the manner in which the incident started. The whole episode started when the said Prakash Singh was found

urinating outside the gate of the Applicant's bungalow and when he was asked to stop, altercations took place, which ultimately ended in causing injury to the said person as well as the Applicant and his family members. As the altercation commenced, other residents from the neighbouring hutment came to the scene and started pelting stones as well as assaulting the Applicant. The Applicant had immediately rushed to the nearest police station. However, it is stated that as two corporators were present in the police station and they dissuaded the Applicant to register the complaint as it was election period. As his complaint was not taken note of, the Applicant rushed to the superior, Deputy Commissioner of Police of the concerned area, who, in turn, directed his subordinate to register the complaint. Inspite of serious injuries suffered by the Applicant and his family members, who were in fact at the receiving end, the concerned police officer though registered complaint on the directions of the Deputy Commissioner of Police, only applied sections 324, 323, 504, 506(2), 427 read with section 34, Indian Penal Code and section 135 of the Arms

Act, though serious offence was made out. On that basis, the said persons have been released on bail by the regular Court. Besides, insofar as the case registered against the Applicant and his family members is concerned, that is for serious offence, i.e., for section 326 and 504 of Indian Penal Code. Indeed, the family members of the Applicant have been granted anticipatory bail by the lower Court. Insofar as the Applicant is concerned, in my opinion, prima facie, there is substance in the stand taken on behalf of the Applicant that having regard to the events that unfolded, in fact, the Applicant and his family members were at the receiving end and the complainant and others, who are accused in the complaint filed by the Applicant, were the aggressors. Besides, the incident in question has happened on the spur of the moment and not premeditated. The Applicant and his family members have suffered serious injuries as can be seen from the injury certificate. Prima facie, I find substance in the grievance made by the Applicant that the concerned Police Officer has not fairly proceeded in the matter and, perhaps, has acted under the dictation of the corporators,

who were trying to dissuade the Applicant from registering the complaint. Besides, granting anticipatory bail to the Applicant, I would think it appropriate to direct the Deputy Commissioner of Police of the concerned area to examine the matter in the light of the grievance made by the Applicant and transfer the investigation of the case to suitable person, as may be advised, to observe fairness in investigation.

2. Accordingly, this Application is allowed on the following terms.

(A) The Applicant is granted anticipatory bail in connection with Crime No. 529/2004 registered with Bandra Police Station on executing personal bond in the sum of Rs.5,000/- (Rupees Five thousand only) with one surety in the like amount.

(B) The Applicant shall comply with the conditions stipulated in section 438(2) of the Code of Criminal Procedure, as applicable to the State of Maharashtra.

3. The Deputy Commissioner of Police of the concerned Area is directed to examine the matter in the light of the grievance made by the Applicant and transfer the investigation of this case to some other police officer, as may be advised.